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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHAMEIKA MOODY as an individual and on
behalf all of others similarly situated,

Plaintiff,

vs.

CHARMING SHOPPES OF DELAWARE,
INC., a corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: C 07-06073 MHP

**PLAINTIFF'S OPPOSITION TO
DEFENDANT CHARMING SHOPPES, INC.'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION PURSUANT TO
F.R.C.P. RULE 12(B)(2).**

**[CONCURRENTLY FILED
DECLARATIONS OF CRAIG S. HUBBLE
AND LARRY W. LEE]**

JUDGE: HON. MARILYN HALL PATEL

DATE: MAY 5, 2008

TIME: 2:00 p.m.

COURTROOM: 15

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION	5
II. PROCEDURAL BACKGROUND	6
III. RELEVANT JURISDICTIONAL FACTS	7
A. CSI Employs All Of The Individuals Who Work In Its Retail Store Locations	8
B. CSI Owns And Operates All Of Its Retail Store Locations	11
C. CSI Participates In The Day-To-Day Management Of Its Retail Divisions	12
D. CSI's organizational structure requires that the personnel in its various divisions directly report to personnel in CSI's Pennsylvania headquarters	14
E. CSI Has Operations And Employees In California Apart From Its Retail Stores	15
IV. APPLICABLE LEGAL STANDARDS	16
V. ARGUMENT	18
A. The Court Possesses General Jurisdiction Over CSI	18
1. CSI has substantial, continuous and systematic contacts with California sufficient for the exercise of general jurisdiction	18
2. CSI cannot establish that the exercise of general jurisdiction in this action would be unreasonable	20
B. The Court Possesses Specific Jurisdiction Over CSI	21
1. CSI has purposefully directed actions within California	21
2. The purposeful conduct of CSI's incorporated divisions must be imputed to CSI for purposes of determining specific jurisdiction.	21
3. Plaintiff's claims arise out of the forum-related conduct	23
4. CSI cannot establish that the exercise of specific jurisdiction in this action would be unreasonable	24
C. Plaintiff Should Be Permitted Further Discovery On Jurisdictional Issues	24
VI. CONCLUSION	25

TABLE OF AUTHORITIES**PAGE(S)****CASES**

<i>Amoco Egypt Oil Co. v. Leonis Navigation Co.</i> , 1 F.3d 848 (9th Cir. 1993)	17
<i>AT&T v. Compagnie Bruxelles Lambert</i> , 94 F.3d 586 (9th Cir. 1996)	18
<i>Ballard v. Savage</i> , 65 F.3d 1495 (9th Cir. 1995)	17, 18, 21, 23
<i>Bancroft & Masters, Inc. v. Augusta Nat'l Inc.</i> , 223 F.3d 1082 (9th Cir. 2000)	17, 19, 20
<i>Bellomo v. Pennsylvania Life Co.</i> , 488 F. Supp. 744 (S.D.N.Y. 1980)	23
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985)	20, 24
<i>Concat LP v. Unilever, PLC</i> , 350 F. Supp.2d 796 (N.D. Cal. 2004)	21, 22
<i>Covad Communications Co. v. Pacific Bell</i> , 1999 U.S. Dist. LEXIS 22789 (N.D. Cal. December 14, 1999)	19
<i>Cybersell v. Cybersell</i> , 130 F.3d 414 (9th Cir. 1997)	17
<i>Data Disc, Inc. v. Systems Tech. Assocs., Inc.</i> , 557 F.2d 1280 (9th Cir. 1977)	24
<i>DeMelo v. Toche Marine, Inc.</i> , 711 F.2d 1260 (5th Cir. 1983)	24
<i>Doe, I v. Unocal Corp.</i> , 248 F.3d 915 (9th Cir. 2001)(per curiam)	18, 22
<i>Gator.com Corp. v. L.L. Bean, Inc.</i> , 341 F.3d 1072 (9th Cir. 2003)	17, 18
<i>Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.</i> , 328 F.3d 1122 (9th Cir. 2003)	16, 17, 21
<i>Int'l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945)	17
<i>IO Group, Inc. v. Pivotal, Inc.</i> , 2004 U.S. Dist. LEXIS 6673 (N.D. Cal. April 19, 2004)	16, 17, 18
<i>Lake v. Lake</i> , 817 F.2d 1416 (9th Cir. 1987)	21
<i>Moody v. Charming Shoppes of Delaware, Inc.</i> , 2008 U.S. Dist. LEXIS 14759 (N.D. Cal. February 27, 2008)	7, 17, 20
<i>Paneno v. Centres for Academic Programmes Abroad Ltd.</i> (2004) 118 Cal. App. 4th 1447	23

1	<i>Perkins v. Benguet Consolidated Mining Co.</i> , 342 U.S. 437 (1952).	17
2	<i>Roth v. Garcia Marquez</i> , 942 F.2d 617 (9th Cir. 1991)	20, 24
3	<i>Sher v. Johnson</i> , 911 F.2d 1357 (9th Cir. 1990)	17, 21
4	<i>Shute v. Carnival Cruise Lines</i> , 897 F.3d 377 (9th Cir. 1990)	23
5	<i>The Flintkote Co. v. General Accident Assurance Co. of Canada</i> , 2004 U.S. Dist. 18192 (N.D. Cal. September 7, 2004)	17, 18, 24
6		
7	<i>Tuazon v. R.J. Reynolds Tobacco Co.</i> , 42 F.3d 1163 (9th Cir. 2006)	18, 19
8	<i>Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.</i> (2002) 99 Cal. App. 4th 228	23
9	<i>Vons Cos., Inc. v. Seabest Foods, Inc.</i> (1996) 14 Cal. 4th 434	17
10	<i>Ziegler v. Indian River County</i> , 64 F.3d 470 (9th Cir. 1995)	17, 23
11		
12		

STATUTES

California Authorities

15	Wage Orders promulgated by the Industrial Welfare Commission at Section 2, 8 CCR §11090(2)(F)	18, 19
----	-----------------------------------------------------------------------------------------------	--------

Federal Authorities

17		
18	FRCP 12(b)(2)	5
19	29 U.S.C. §203(d)	19
20		
21		
22		
23		
24		
25		
26		
27		
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OPPOSITION TO MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I.

INTRODUCTION

Plaintiff Shameika Moody (“Plaintiff”) hereby submits this Opposition (“Opposition”) to Defendant Charming Shoppes, Inc.’s (“Defendant” or “CSI”) Motion to Dismiss for Lack of Personal Jurisdiction pursuant to FRCP 12(b)(2) (“Motion to Dismiss”).

Despite the fact that she has not been permitted discovery to date, Plaintiff has uncovered an abundance of evidence that not only contradicts the conclusory declarations submitted by CSI, but also establishes that this Court has personal jurisdiction over CSI.

Contrary to the assertion throughout CSI’s Motion to Dismiss that it is simply a “holding company,” CSI has routinely and continually represented to its shareholders and the investing public that it is a “multi-brand, multi-channel retailer” that “*operates*” over 2,400 retail in 48 states “under the names” Lane Bryant, Fashion Bug and Catherines, among others, including over 175 retail locations in California. CSI readily admits in SEC filings, on its website, and in press releases that the 30,000+ employees of its various retail brands are *employees of CSI*, and CSI provides a wide array of benefits to such employees at its own expense, as well as an employee stock purchase plan pursuant to which shares of CSI can be purchased through payroll deductions. Potential employees are instructed to complete an application entitled “**CHARMING SHOPPES, INC. EMPLOYMENT APPLICATION**,” checking a box indicating with which of CSI’s “divisions” the applicant seeks employment, including Charming Corporate, Lane Bryant, Fashion Bug, Lane Bryant Outlet and Catherines. In fact, the handbook provided to associates at Lane Bryant stores indicates that CSI is their employer.

CSI also is actively involved in the day-to-day operations of its retail divisions. CSI’s materials demonstrate that it is involved in such operational decisions as store payroll hours, inventory management, employee compensation, marketing, store closings, the elimination of employee positions, loss prevention, the identification and acquisition of new store locations and capital budgets.

In sum, *CSI is the employer of the individuals who work in its 175+ California retail stores*, including its Lane Bryant, Fashion Bug, Catherines, Petite Sophisticate and Lane Bryant Outlet stores.

Setting aside the thousands of employees in its retail store locations, CSI not only employs additional personnel in California, but also actively recruits potential employees for positions within California via its website. In addition, CSI maintains a facility, with a telephone listing, in California.

Even assuming that CSI somehow can refute the proliferation of admissions within its own securities filings, on its website and in its press releases, CSI's involvement in the day-to-day operations of its incorporated retail divisions mandates that their activities and presence in California be imputed to CSI for jurisdictional purposes.

CSI's Motion to Dismiss is wholly without merit and was filed solely for purposes of harassment and delay. Not only was all of the information cited herein well-within CSI's possession, custody and control prior to its filing of this frivolous motion, but counsel for Plaintiffs' specifically apprised counsel for CSI that the assertions made herein appeared to conflict with CSI's own securities filings and the Lane Bryant handbook.¹ Indeed, CSI's Motion to Dismiss is sanctionable under Federal Rule of Civil Procedure 11.

The Court should deny CSI's Motion to Dismiss in its entirety.

II.

PROCEDURAL BACKGROUND

As detailed in response to the unsuccessful motion to dismiss previously filed in this action by defendant Charming Shoppes of Delaware, Inc. (“CSDI”), Plaintiff Shameika Moody was employed as an hourly paid employee in a Lane Bryant retail store in San Francisco, California. (First Amended Complaint, ¶ 11.) Plaintiff alleges that, like the other putative class members, she was required to work through meal breaks and was not properly compensated for overtime wages. (First Amended Complaint, ¶¶ 11, 36-40, 44-46 and 48-53.)

¹ Such conduct by CSI and its counsel is no different than the prior jurisdictional challenge of defendant CSDI, wherein CSDI argued that it was only acting as a “payroll” service (such as ADP) for LBI and the other divisions within CSI. (Declaration of Larry W. Lee (“Lee Dec.”), ¶ 2.) Subsequent to this Court’s denial of CSDI’s prior Motion to Dismiss, Plaintiff has discovered that ADP was in fact, the actual payroll company used to process Plaintiff’s payroll, not CSDI. (Lee Dec., ¶ 3, Ex. 1.) CSDI could not have been a “payroll” service as it claimed, due to the fact that ADP was the actual payroll service being used. (Lee Dec., ¶ 4.)

1 While her Complaint originally named only CSDI – the entity that was named on the pay stubs
 2 and wage statements provided to Plaintiffs – Plaintiff filed a First Amended Complaint on or about
 3 January 18, 2008, naming CSI and Lane Bryant, Inc. (“LBI”) as additional defendants. (Declaration
 4 of Craig S. Hubble (“Hubble Dec.”), ¶ 2.)

5 On or about February 11, 2008, the Court conducted a hearing upon CSDI’s motion to dismiss
 6 the claims against it, in which CSDI asserted that it was not Plaintiff’s employer and was not subject
 7 to personal jurisdiction in California. Finding instead that Plaintiff’s claims sufficiently arose out of
 8 CSDI’s forum-related activities – which included administering all paychecks and wage statements for
 9 employees at Lane Bryant stores in California – the Court denied CSDI’s motion in an opinion issued
 10 February 27, 2008. *See Moody v. Charming Shoppes of Delaware, Inc.*, 2008 U.S. Dist. LEXIS 14759
 11 (N.D. Cal. February 27, 2008).

12 Approximately one month later, CSI filed the present motion, similarly asserting that LBI, not
 13 CSI, was in fact Plaintiff’s employer and that CSI was not subject to personal jurisdiction in
 14 California.

15 III.

16 **RELEVANT JURISDICTIONAL FACTS**

17 In its Motion to Dismiss and conclusory supporting declarations, CSI claims that it is nothing
 18 more than a “holding company” that does business only through its separate and distinct wholly
 19 owned subsidiaries. (Sullivan Dec., ¶¶ 3, 8.) Mr. Sullivan, CSI’s Senior Vice President and
 20 Controller, further declares under oath that CSI does not exert any managerial control over the
 21 operations of LBI, but instead – consistent with its status as an investor – only elects board of director
 22 members. (Sullivan Dec., ¶ 8.)

23 As a means of supporting Mr. Sullivan’s conclusory statements, CSI also submits the equally
 24 conclusory and skeletal declaration of Elizabeth Ackley, the Vice President of Human Resources for
 25 LBI. Ms. Ackley declares that all Lane Bryant stores in California are “owned and operated” by LBI;
 26 that all employees in such stores are “employed” by LBI and that the business operations of such
 27
 28

1 stores are “directed and managed” by the LBI management team.² (Ackley Dec., ¶ 3.)

2 The conclusory sworn testimony of Mr. Sullivan and Ms. Ackley is directly rebutted by
3 numerous securities filings made by CSI,³ press releases issued by CSI and the representations made
4 on CSI’s own website.

5 **A. CSI Employs All Of The Individuals Who Work In Its Retail Store Locations**

6 CSI has repeatedly represented that *all* of the sales associates and other employees at its
7 various retail store and other locations are employees of CSI.

8 In its Form 10-K Annual Report filed with the SEC on April 2, 2008 – only two (2) days after
9 the filing of the present Motion to Dismiss – CSI expressly represents:

10 As of the end of Fiscal 2008 *we employed approximately 30,200*
11 *associates*, which included approximately 19,900 part-time employees.
12 In addition, *we hire* a number of temporary employees during the
13 December holiday season. Approximately 80 of *our employees* are
14 represented by unions whose contracts are currently due to expire in
15 August 2009. We believe that *our overall relationship with* these
16 unions and *our employees* in general is satisfactory.

17 (Hubble Dec., ¶ 3, Ex. A at p. 12.) (emphasis added.)

18 In its 2006 Annual Report, CSI specifically represented that it had “30,000 *Charming Shoppes*
19 *associates* worldwide.” (Hubble Dec., ¶ 4, Ex. B at p. 17.) (emphasis added.)

20 Similarly, on its website, www.charming.com, CSI provides a “Company Overview,”
21 highlighting CSI’s history and describing its core brands. (Hubble Dec., ¶ 14.) Under the heading
22 “Associates,” CSI again states “*Charming Shoppes, Inc. employs approximately 30,000 associates.*”
23 (Hubble Dec., ¶ 14, Ex. L.) (emphasis added.) On another page of its website, CSI plugs its
24 commitment to fostering a diverse culture “among *our more than 30,000 associates* across the
25 country.” (Hubble Dec., ¶ 14, Ex. M.) (emphasis added.)

26 ² Ms. Ackley does not explain how, in her role in Human Resources, she is competent to testify as to
27 the management of LBI’s “business operations.”

28 ³ Indeed, if the submitted testimony of Mr. Sullivan and Ms. Ackley is true, CSI essentially admits to
wide spread material misrepresentations and substantial securities violations.

Furthermore, representations are made throughout the handbook provided to associates in Lane Bryant stores that not only indicate that CSI is their employer, but also directly rebut Ms. Ackley's sworn testimony that "Lane Bryant has its own employee handbook and personnel policies." (Hubble Dec., ¶ 6, Ex. D; Ackley Dec., ¶ 5.) Indeed, one need look no further than the *first page* of the handbook⁴ to see CSI's direct control of the terms of employment, as the handbook expressly states:

Nothing in this book or any other document not approved as a contract by the Chairman of the Board or the Executive Vice President of Human Resources *at Charming Shoppes, Inc.*, is to be construed as creating a contract or term of employment."

(Hubble Dec., Ex. D at p. 1.) (emphasis added.)

The handbook contains numerous other statements that portray Lane Bryant as nothing more than a "brand" or "division" within CSI and that indicate that CSI is the individual's employer. (Hubble Dec., Ex. D at p. 6 ("Lane Bryant is *owned* by Charming Shoppes, Inc., a family of *brands* . . ."). (emphasis added); p. 8 (characterizing Lane Bryant's Columbus, Ohio headquarters as a "Divisional office[]"); p. 9 (detailing CSI's expectations for its associates). The handbook further directing employees to contact "*CSI* Benefits On Call" for questions concerning payroll, W-2 re-issue, employment verification and other benefits questions and describes CSI's ethical standards, providing a "hotline" number for employees, which, when called, indicates that it "has been set up for *employees of Charming Shoppes.*" (Hubble Dec., ¶ 29, Ex. D at p. 20, 40.) (emphasis added). Given these representations, perhaps it is not surprising that – although she references and relies upon the handbook in her declaration – Ms. Ackley failed to attach a copy.

CSI's website provides a wealth on information for potential job applicants, as well, featuring a section entitled "Career Center." (Hubble Dec., ¶ 18.) On its "Career Opportunities" page, CSI instructs potential employees interested in a position in one of CSI's 2,400+ retail stores to print and complete an employment application, a PDF version of which is linked on the website, then "bring [the] completed application" to the nearest CSI brand store. (Hubble Dec., ¶ 18, Ex. N.) The

⁴ Plaintiff has provided the entire handbook, which previously was absent from the record. (Hubble Dec., Ex. D.)

1 employment application bears CSI's logo at the top of the page, and lists CSI's various brand names at
 2 the bottom, including Lane Bryant, Fashion Bug and Catherines. (Hubble Dec., ¶ 19, Ex. O.)
 3 Significantly, the document is entitled "CHARMING SHOPPES, INC. EMPLOYMENT
 4 APPLICATION." (Hubble Dec., ¶ 19, Ex. O.) Before completing the required personal information,
 5 the applicant is asked to check their "DIVISION OF CHOICE," including "Charming Corporate,"
 6 "Lane Bryant," "Lane Bryant Outlet," "Fashion Bug," "Catherines," and "Petite Sophisticate," among
 7 others. (Hubble Dec., ¶ 19, Ex. O.)

8 The "Career Center" section of CSI's website also contains detailed information about the
 9 substantial benefits provided by CSI to its employees. (Hubble Dec., ¶ 20, Ex. P.) These benefits
 10 include, among others:

- 11 • a health plan available to full-time associates in a "shared-cost arrangement, *with the*
 12 *company absorbing the majority of the cost;*"
- 13 • life, accidental death and dismemberment and short-term disability insurance, "all paid
 14 for *by Charming Shoppes;*" and
- 15 • the ability to participate in a 401(k) program and/or "an excellent *employee* stock
 16 purchase plan via easy *payroll deductions.*"

17 (Hubble Dec., ¶ 20, Ex. P.) (emphasis added.)

18 Finally, CSI's treatment of *all* of the sales associates in its various retail stores as its own
 19 employees is further reflected in correspondence/memorandum to such employees that was recently
 20 filed with the SEC. In a Form 8-K Report of Unscheduled Material Events or Corporate Changes filed
 21 with the SEC on or about February 6, 2008, CSI provided a copy of not only a press release related to
 22 its efforts to streamline operations, but also a "Letter to Employees dated February 5, 2008." (Hubble
 23 Dec., ¶ 5, Ex. C at p. 1 and Ex. 99.1 and 99.2 thereto.) The letter – entitled "CSI CORPORATE
 24 ANNOUNCEMENT" is addressed to all "Associates" regardless of the store brand or division within
 25 which they work. (Hubble Dec., Ex. C, Ex. 99.2 thereto.) The letter, which appears designed to
 26 alleviate concerns among CSI's employees, addresses not only changes in executive management at
 27 CSI, but also discusses CSI's decision to close 150 "unprofitable store locations . . . includ[ing] about
 28 100 Fashion Bug locations, 40 Lane Bryant stores and 10 Catherines stores." (Hubble Dec., Ex. C,
 Ex. 99.2 thereto.)

1 **B. CSI Owns And Operates All Of Its Retail Store Locations**

2 In its 2008 10-K Annual report, CSI does not characterize itself as a “holding company” as it
3 would lead the Court to believe, but instead states that it is:

4 “a **multi-brand**, multi-channel specialty apparel **retailer**, with a leading
5 market share in women’s plus-size specialty apparel. Our Retail Stores
6 segment operates retail stores, and related E-commerce websites under
7 the following **distinct names**: LANE BRYANT, LANE BRYANT
8 OUTLET, FASHION BUG, CATHERINES PLUS SIZES, PETITE
9 SOPHISTICATE, and PETITE SOPHISTICATE OUTLET. . . . As of
10 February 2, 2008, **we operated** 2,409 stores in 48 states.”

11 (Hubble Dec., Ex. A at p. 1.) (emphasis added.)

12 This theme is repeated throughout CSI’s 2008 10-K Annual Report, as CSI refers to “[o]ur
13 2,409 retail stores” and specifically states that “[a]ll retail stores **are operated under our direct**
14 **management.**” (Hubble Dec., Ex. A at p. 2, 4.) (emphasis added.) At no point, does CSI state that it is
15 a mere holding company or investor in a series of separate and distinct corporations such as LBI, or
16 that these other corporations, including LBI, manage themselves completely independent of CSI. (*See*
17 Sullivan Dec., ¶¶ 3, 8; Ackley Dec., ¶ 3.)

18 In fact, CSI has represented in press releases time and again that it owns and operates all of the
19 Lane Bryant, Fashion Bug and Catherines retail locations,⁵ among others.

20 For example, after the tragic shooting in a Lane Bryant store in Tinley Park, Illinois, claimed
21 the lives of five women, Lane Bryant issued a press release offering sympathy to their families.
22 (Hubble Dec., ¶ 7, Ex. E.) The press release concludes by stating that “**Lane Bryant is owned and**
23 **operated by Charming Shoppes, Inc.**” (Hubble Dec., ¶ 7, Ex. E.) (emphasis added.)

24 Similarly, a March 13, 2008 press release issued by CSI states “Charming Shoppes, Inc.
25 **operates** 2,410 retail stores in 48 states **under the names** LANE BRYANT(R), FASHION BUG(R),
26 FASHION BUG PLUS(R), CATHERINES PLUS SIZES(R), LANE BRYANT OUTLET(R),
27

28 ⁵ According to its website, CSI currently has at least **175** retail stores in California, including 90 Lane
Bryant, 45 Fashion Bug, 36 Catherines Plus Sizes and 4 Petite Sophisticate. (Hubble Dec., ¶ 21, Ex.
Q.) In addition, there appear to be at least 11 Lane Bryant Outlet stores in California. (Hubble Dec., ¶
21, Ex. R.)

PETITE SOPHISTICATE(R) and PETITE SOPHISTICATE OUTLET(R).” (Hubble Dec., ¶ 8, Ex. F.) (emphasis added.) Virtually identical language – with the only potential change being the number of stores – has been used by CSI in a multitude of press releases, including, but not limited to, a June 25, 2007 press release concerning the promotion of LBI’s current President, LuAnn Via, to her current position, a March 19, 2008 press release announcing CSI’s fourth quarter results, and an April 2, 2008 press release – issued two (2) days after the filing of CSI’s Motion to Dismiss – concerning CSI’s mailing of definitive proxy materials. (Hubble Dec., ¶¶ 10-12, Ex. H-J.)

As with CSI’s admission that it is the employer of all personnel in its various retail locations, CSI’s other securities filings and press releases, along with its website, constantly refer to CSI’s approximately 2,400 stores in 48 states, describing such stores not as separate and distinct corporations, but as CSI’s “brands.” (Hubble Dec., Ex. B at p. 10 (referring to CSI’s 2,378 stores and various “brands”); ¶ 15, Ex. L (asserting that CSI is “the parent company of four distinct brands” and describing CSI’s “Core Brands”).)

The fact that LBI and CSI’s other wholly owned divisions are nothing more than “brands” under CSI’s umbrella is further reflected in the fact that CSI, not these individual entities, owns the domain names and maintains such websites as lanebryant.com, fashionbug.com and catheirnes.com. (Hubble Dec., ¶ 16, Ex. L.) Moreover, when an individual goes to the website for one of CSI’s separate brands stores, the individual is taken to *CSI’s* website. (Hubble Dec., ¶ 16.)

C. CSI Participates In The Day-To-Day Management Of Its Retail Divisions

Assuming that CSI can rebut the substantial evidence that it owns and operates all of the retail stores under its key brand names, overwhelming evidence contained within CSI’s securities filings, press releases and website demonstrates that – contrary to CSI’s submitted sworn testimony – CSI is intimately and extensively involved in nearly every aspect of the day-to-day operations of its retail divisions.

Indeed, as it specifically relates to this litigation, CSI’s key initiatives for the coming fiscal year, according to its 2008 10-K Annual Report, include continuing its efforts “to selectively *reduce store payroll hours*.” (Hubble Dec., Ex. A at p. 41.) (emphasis added.)

1 CSI has submitted securities filings and issued a variety of press releases detailing the actions
2 that CSI initiated in 2007 in response to its poor operational and financial performance. CSI reviewed
3 these initiatives in the definitive proxy materials that it forwarded to its shareholders earlier this month
4 in an attempt to stave off alleged dissident shareholders. (Hubble Dec., ¶ 12, Ex. J.)

5 According to CSI, its Board and management team identified and closed 150 underperforming
6 stores,⁶ which included approximately 100 Fashion Bug locations, 40 Lane Bryant stores and 10
7 Catherines stores. (Hubble Dec., Ex. J; *see also* Ex. C, Ex. 99.2 thereto; Ex. I; Ex. K.) CSI also
8 claims that its Board and management team “[t]ightened inventory levels . . . reducing same store
9 inventories.” (Hubble Dec., Ex. J; *see also* Ex. C, Ex. 99.1 thereto; Ex. I; Ex. K.) CSI also claims the
10 Board and management team was responsible for the elimination of “approximately 200 full-time
11 corporate and field management positions.”⁷ (Hubble Dec., Ex. J.)

12 Moreover, among the various areas of centralized operation that CSI oversees are:

- 13 • the determination of wages and compensation for its employees (Hubble Dec., Ex. P at
14 p. 2; EX. S at p.1.);
- 15 • loss prevention (Hubble Dec., Ex. T at p. 3.);
- 16 • finance, including credit, budgeting, auditing and payroll functions (Hubble Dec., Ex. T
17 at p. 1.);
- 18 • logistics/distribution of merchandise from CSI’s two distribution centers⁸ (Hubble
19 Dec., Ex. T at p. 1.);
- 20 • customer service (Hubble Dec., Ex. T at p. 1.);
- 21 • the identification, negotiation for and securing appropriate sites for CSI’s store
22 locations (Hubble Dec., Ex. T at p. 2.);
- 23 • the design and construction of the interior of CSI’s retail stores (Hubble Dec., Ex. T at
24 p. 2.); and

25 ⁶ In addition to the store closings, CSI significantly slowed its plans for new store openings. (Hubble
26 Dec., Ex. A at p. 4; Ex. C, Ex. 99.1 and 99.2 thereto; Ex. I; Ex. K.)

27 ⁷ Other press releases place the number of eliminated positions at approximately 150, or 13% of the
28 total corporate and filed management positions. (Hubble Dec., Ex. C, Ex. 99.1 thereto; Ex. I.)

⁸ CSI operates one distribution center that services CSI’s Lane Bryant and Catherines stores, and
another that services CSI’s Fashion Bug, Lane Bryant Outlet, Petite Sophisticate and Petite
Sophisticate Outlet stores. (Hubble Dec., Ex. A at p. 7.)

- marketing (Hubble Dec., ¶ 9, Ex. G.)

Simply put, these are far from the activities of a mere investor.

D. CSI's Organizational Structure Requires That The Personnel In Its Various Divisions Directly Report To Personnel In CSI's Pennsylvania Headquarters

As opposed to a holding company that does little more than invest in its subsidiaries and elect an occasional board member as portrayed in the declarations it has submitted, CSI has established an organizational structure under which the various departments and executives within its brands have direct reporting accountability to CSI's Bensalem, Pennsylvania headquarters.

For example, although Ms. Ackley avers that LuAnn Via directs LBI as its President, CSI issued a press release on June 25, 2007, noting Ms. Via's "promotion" from President of CSI's Catherine's brand to her current position as "Group Divisional President." (Hubble Dec., Ex. H.) CSI goes on to note that, in such role, Ms. Via will be "*reporting* to Dorritt J. Bern, Chairman, CEO and President of Charming Shoppes, Inc." (Hubble Dec., Ex. H.) (emphasis added.)

Similarly, in a November 14, 2007 press release, CSI announced the creation of a Corporate Marketing Group and the promotion of Tim White to the position of Executive Vice President and Chief Marketing Officer of CSI. (Hubble Dec., Ex. G.) Like Ms. Via, Mr. White reported directly to Ms. Bern. (Hubble Dec., Ex. G.)

In his new role, Mr. White was charged with overseeing "the strategic direction of marketing for Charming Shoppes' retail brands." (Hubble Dec., Ex. G.) CSI further announced

The Corporate Marketing Group will service the Company's Lane Bryant, Fashion Bug, Catherines Plus Sizes, and Outlet businesses in functional areas such as production, media buying, customer relationship management, and database marketing. Each of the Company's retail businesses will have *dedicated brand managers* who will have *functional reporting accountability* to the consolidated group in Bensalem.

(Hubble Dec., Ex. G.) (emphasis added.)

In fact, CSI's 2008 10-K Annual Report set forth detailed information regarding the structure of CSI's retail stores, conveying that each store has a manager and assistant manger, with their performance supervised by a district manager, who was responsible for an average of 12 stores.

1 (Hubble Dec., Ex. A at p. 4.) The district managers, in turn, report to regional managers, who report
2 to the Vice President of Stores. (Hubble Dec., Ex. A at p. 4.)

3 This hierarchy is further reflected in the Corporate Announcement forwarded to all associates
4 and submitted as part of CSI's February 6, 2008 8-K filing. (Hubble Dec., Ex. C.) In her
5 announcement, Ms. Bern notes that Joe Baron was assuming responsibility for leadership of the
6 Fashion Retail Group on an interim basis. (Hubble Dec., Ex. C.) Ms. Bern then goes on to detail the
7 various executives from CSI's divisions that will be reporting to Mr. Baron, including executives from
8 CSI's various retail divisions. (Hubble Dec., Ex. C.)

9 Consistent with Ms. Via's "promotion" from President of the Catherines brand to Group
10 Divisional President, CSI declares on its website that it not only allows, but encourages employees to
11 transfer within its various divisions. (Hubble Dec., ¶ 22, Ex. S.) CSI states that it encourages its
12 associates to "explor[e] career options across the corporation" (Hubble Dec., ¶ 22, Ex. S.) Unlike a
13 neutral holding company or mere investor, CSI adds that, it "promote[s] from within whenever
14 possible, and our multiple brands provide many opportunities for associates to explore." (Hubble
15 Dec., ¶ 22, Ex. S.)

16 **E. CSI Has Operations And Employees In California Apart From Its Retail Stores**

17 In addition to its substantial ties to California through its operation of at least 175 retail store
18 locations and employment of all individuals who work therein, CSI's website reflects that it has
19 additional facilities and employees in California.

20 The "Career Center" section of CSI's website also features the ability to search "current job
21 openings." (Hubble Dec., ¶ 24.) A potential employee can search by position, brand or location.
22 (Hubble Dec., ¶ 24.)

23 A search for all available positions within California revealed not only potential opportunities
24 in CSI's retail locations, but also a position for a Quality Control Inspector in Charming Shoppes
25 Santa Fe Springs, California⁹ facility. (Hubble Dec., ¶ 24, Ex. U.) The ad states that CSI is

26
27 ⁹ Santa Fe Springs is a centralized location for the textile and apparel industry in a suburb of Los
28 Angeles, California. (Hubble Dec., ¶ 24.)

1 “searching for a Quality Control Inspector for *our inspection facility in Santa Fe Springs, CA.*”
 2 (Hubble Dec., ¶ 24, Ex. U.) (emphasis added.)

3 After clicking on the “Apply Online” tab, a potential employee is directed to another page that
 4 not only contains the exact same language, but also specifically identifies the “Division” within which
 5 the position operates as “Charming Shoppes.” (Hubble Dec., ¶ 25, Ex. V.) In addition, a virtually
 6 identical ad was posted on the careerbuilder.com website, identifying the company/employer as
 7 “Charming Shoppes” and referencing the CSI inspection facility in Santa Fe Springs, California.
 8 (Hubble Dec., ¶ 26, Ex. W.)

9 A subsequent search of the yellowbook.com website, operated by AT&T, revealed that
 10 “Charming Shops Quality Control” is located at 12816 Shoemaker Ave., in Santa Fe Spring,
 11 California. (Hubble Dec., ¶ 27, Ex. X.) The listed telephone number for the facility is (562) 404-
 12 7780. (Hubble Dec., ¶ 27, Ex. X.) The 562 area code has been assigned for use in Southern
 13 California. (Hubble Dec., ¶ 27.)

14 Calls placed after business hours are greeted by an automated message, which states:

15 Hi. You have reached *Charming Shoppes*’ inspection team. Please
 16 leave a brief message, and we will call you back as soon as possible.
 17 Thank you.”

(Hubble Dec., ¶ 28.)

18 As discussed below, these relevant jurisdictional facts clearly demonstrate that CSI is subject
 19 to personal jurisdiction in California.

20 IV.

21 APPLICABLE LEGAL STANDARDS

22 This Court may exercise personal jurisdiction over a nonresident defendant to the extent
 23 permitted by due process. *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements Ltd.*, 328 F.3d
 24 1122, 1129 (9th Cir. 2003); *IO Group, Inc. v. Pivotal, Inc.*, 2004 U.S. Dist. LEXIS 6673, *6 (N.D.
 25 Cal. April 19, 2004). As this Court has recognized, in order for the exercise of personal jurisdiction to
 26 comport with due process, the nonresident defendant must possess sufficient minimum contacts with
 27 California and the maintenance of the suit must not “offend traditional notions of fair play and
 28

1 substantial justice.” *IO Group*, 2004 U.S. Dist. LEXIS 6673, *6, quoting *Int’l Shoe Co. v.*
 2 *Washington*, 326 U.S. 310, 316 (1945).

3 Personal jurisdiction can be based upon either general jurisdiction or specific jurisdiction.
 4 *Gator.com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1076 (9th Cir. 2003); *The Flintkote Co. v. General*
 5 *Accident Assurance Co. of Canada*, 2004 U.S. Dist. 18192, *5 (N.D. Cal. September 7, 2004). Where
 6 the defendant’s contacts or commercial activities impact California on a “substantial, continuous and
 7 systematic” basis, general jurisdiction exists. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S.
 8 437, 446-47 (1952); *Vons Cos., Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434.

9 In determining whether general jurisdiction exists, courts examine “whether the defendant
 10 makes sales, solicits or engages in business in the state, serves the state’s markets, designates an agent
 11 for service of process, holds a license, or is incorporated there. *Bancroft & Masters, Inc. v. Augusta*
 12 *Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000); *see also IO Group*, 2004 U.S. Dist. LEXIS 6673 at
 13 *6. In addition, requiring the defendant to defend itself in California must be reasonable. *Amoco*
 14 *Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 851, n. 2 (9th Cir. 1993); *Moody*, 2008 U.S. Dist.
 15 LEXIS 14759 at *7.

16 Specific jurisdiction exists where the nonresident defendant’s contacts are less substantial, yet
 17 the nonresident defendant performs an act(s) or consummates some transaction(s) whereby it
 18 purposefully avails itself of the privilege of doing business in California, and the plaintiff’s claims
 19 arise out of or relate to such forum-related activities. *Cybersell v. Cybersell*, 130 F.3d 414, 416 (9th
 20 Cir. 1997). In addition, as with general jurisdiction, the court’s exercise of jurisdiction must be
 21 reasonable. *Id.*

22 The requirement of purposeful availment is met where the defendant has “performed some
 23 type of affirmative conduct which allows or promotes the transaction of business within the forum
 24 state.” *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990). In order to meet the second
 25 requirement, the claims asserted must be related to or arise out of such conduct. *Ziegler v. Indian*
 26 *River County*, 64 F.3d 470, 473 (9th Cir. 1995).

27 In order to defeat CSI’s Motion to Dismiss, Plaintiff bears the burden of making a *prima facie*
 28 showing that jurisdiction exists. *Harris Rutsky*, 328 F.3d at 1129; *Ballard v. Savage*, 65 F.3d 1495,

1 1498 (9th Cir. 1995). To meet this burden, Plaintiff “need only demonstrate facts that if true would
 2 support jurisdiction over the defendant.” *Doe, I v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir.
 3 2001)(per curiam), quoting *Ballard*, 65 F.3d at 1498.

4 As it has previously acknowledged in multiple decisions, the Court “must take uncontroverted
 5 allegations as true and resolve conflicts between the facts contained in the parties’ affidavits in favor
 6 of” Plaintiff. *IO Group*, 2004 U.S. Dist. LEXIS 6673 at *10, citing *Gator.com Corp.*, 341 F.3d at
 7 1075-76; *Flintkote*, 2004 U.S. Dist. 18192 at *8, citing *Gator.com Corp.*, 341 F.3d at 1075-76; *see*
 8 *also AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

9 V.

10 ARGUMENT

11 A. The Court Possesses General Jurisdiction Over CSI

12 1. CSI has substantial, continuous and systematic contacts with California sufficient 13 for the exercise of general jurisdiction

14 In light of the jurisdictional facts conveyed above, CSI has substantial, continuous and
 15 systematic contacts with California sufficient for the exercise of general jurisdiction.

16 In determining whether general jurisdiction exists, the Court should consider such factors as
 17 “whether the defendant makes sales, solicits or engages in business in the state, serves the state’s
 18 markets, designates an agent for service of process, holds a license, or is incorporated [here].”
 19 *Bancroft*, 223 F.3d at 1086. While the standard for general jurisdiction is high, CSI’s contacts with
 20 California “approximate [its] physical presence.” *Tuazon v. R.J. Reynolds Tobacco Co.*, 42 F.3d 1163,
 21 1169 (9th Cir. 2006). Like the defendant in *Tuazon*, CSI not only has stepped through the door, it also
 22 has sat down and made itself at home. *Id.*

23 As reflected above, CSI is the “employer” of the thousands of individuals in California who
 24 work at its retail locations and other facilities.¹⁰ CSI has readily – and repeatedly – admitted that it

25 ¹⁰ CSI’s admissions are also entirely consistent with the definition of an “employer” under California
 26 law. For purposes of California’s labor laws, the term “employer” denotes “any person . . . who
 27 directly or indirectly, or through an agent or any other person, employs or exercises control over the
 28 wages, hours, or working conditions of any person.” *See* Wage Orders promulgated by the Industrial

1 “employs approximately 30,000 associates” in 48 states, including California. (Hubble Dec., Ex. A at
 2 p. 12; Ex. B at p. 17; Ex. L; Ex. M.) Even the handbook provided to Lane Bryant employees – and
 3 relied upon by CSI through Ms. Ackley’s declaration – reflects that **only CSI** can alter the terms of an
 4 associate’s employment. (Hubble Dec., Ex. D at p. 1).

5 Moreover, CSI has substantial activities in California, including its operation of 175+ retail
 6 store locations and its Quality Control facility in Santa Fe Springs, California. (Hubble Dec., Ex. Q;
 7 Ex. R; Ex. U-X.) CSI has represented it each of its retail locations is “**operated under [CSI’s] direct**
 8 **management.**” (Hubble Dec., Ex. A at p. 4.) (emphasis added.) Through these facilities, CSI “makes
 9 sales, solicits or engages in business in the state, [and] serves the state’s markets.” *Bancroft*, 223 F.3d
 10 at 1086.

11 Given the submitted evidence of CSI’s substantial contacts with – and conduct within –
 12 California, Plaintiff respectfully submits that she has established a *prima facie* case that CSI is subject
 13 to general jurisdiction in California. *See, e.g., Covad Communications Co. v. Pacific Bell*, 1999 U.S.
 14 Dist. LEXIS 22789, *21 (N.D. Cal. December 14, 1999) (documents, including press releases and
 15 Internet postings, demonstrated that defendant issued directives to its subsidiaries, oversaw marketing,
 16 shared legal counsel, and participated in negotiation of agreements, constituted a *prima facie* showing
 17 that defendant did “much more than simply hold stock in its regional companies” and was subject to
 18 personal jurisdiction in California); *Tuazon*, 42 F.3d at 1170 (defendant that maintained an office and
 19 a staff of permanent employees, advertised in local media, targeted local consumers, and derived
 20 millions in annual revenues from sales in state was subject to general jurisdiction).

21
 22
 23
 24 Welfare Commission at Section 2, 8 CCR §11090(2)(F). This definition is patterned on the federal
 25 law definition of “employer” set forth in the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et*
 26 *seq.*, which includes “any person acting directly or indirectly in the interest of an employer in relation
 27 to an employee” 29 U.S.C. §203(d). Given the plethora of evidence that clearly supports the fact
 28 that CSI is the employer of all individuals who work in any of its “divisions/brands,” Plaintiff intends
 to seek summary adjudication that CSI is indeed the employer, and thus putting the issue of “who the
 employer is” to rest, once and for all, in this case.

1 **2. CSI cannot establish that the exercise of general jurisdiction in this action would**
 2 **be unreasonable**

3 Where – as here – a plaintiff has demonstrated the *prima facie* existence of general jurisdiction,
 4 a presumption arises that the exercise of personal jurisdiction is reasonable. *See Roth v. Garcia*
 5 *Marquez*, 942 F.2d 617, 625 (9th Cir. 1991). As this Court recognized in denying CSDI’s motion to
 6 dismiss, “the burden is on the defendant to put forth a **compelling** case that jurisdiction would be
 7 unreasonable.” *Moody*, 2008 U.S. Dist. LEXIS 14759 at *21 (emphasis added); *see also Bancroft*,
 8 223 F.3d at 1088 (9th Cir. 2000); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985).

9 As was the case in connection with CSDI’s motion, CSI has not demonstrated any hardship or
 10 suggested, in any way, that proceeding with the action in California would be unreasonable, let alone
 11 put forth the compelling evidence necessary to overcome the presumption of reasonableness. *See*
 12 *Moody*, 2008 U.S. Dist. LEXIS 14759 at *21.

13 Setting aside CSI’s failure to make **any** showing whatsoever as to the alleged unreasonableness
 14 of proceeding with this suit in California, the factors to be considered by this Court demonstrate,
 15 instead, that proceeding with this action in California is entirely reasonable. More specifically, (1) the
 16 extent of CSI’s conduct within California are substantial; (2) given the presence of its wholly-owned
 17 subsidiaries CSDI and LBI and the fact that all three parties are represented by the same counsel, the
 18 burden upon CSI of proceeding with this action in California is minimal; (3) California has a strong
 19 interest in adjudicating the claims of its citizens that arise under California labor laws; (4) given the
 20 presence of CSDI and LBI, the most efficient manner of proceeding with this dispute is in California;
 21 (5) the presence of Plaintiff and the vast majority, if not all, of the putative class members in
 22 California weighs in favor of proceeding in California; and (6) there is not a more appropriate forum
 23 for the resolution of this dispute. *See Bancroft*, 223 F.3d at 1088

24 Given the existence of general jurisdiction over CSI in California, CSI’s failure to rebut the
 25 presumption of reasonableness and the overwhelming evidence demonstrating the reasonableness of
 26 proceeding with this action in California, the Court must deny CSI’s Motion to Dismiss in its entirety.
 27
 28

B. The Court Possesses Specific Jurisdiction Over CSI

1. CSI has purposefully directed actions within California

The purposeful availment prong of the minimum contacts analysis involves a “qualitative evaluation of the defendant’s contacts with the forum state.” *Harris Rutsky*, 328 F.3d at 1130, quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). As noted above, the requirement is met where the defendant has “performed some type of affirmative conduct which *allows or promotes the transaction of business* within the forum state.” *Sher*, 911 F.2d at 1362 (emphasis added); *see also Harris Rutsky*, 328 F.3d at 1130.

If the Court determines that CSI’s conduct is insufficient to establish general jurisdiction, it is clear that CSI’s activities constitute purposeful conduct aimed at California. Indeed, to make a *prima facie* showing that CSI purposefully directed actions within California, Plaintiff “need only demonstrate facts that if true would support jurisdiction over” CSI. *Concat LP v. Unilever, PLC*, 350 F. Supp.2d 796, 812 (N.D. Cal. 2004); *Ballard*, 65 F.3d at 1498

As set forth in detail above, CSI has stated over and over that it is the “employer” of the approximately 30,000 associates in its various retail locations, including the thousands of employees at the 175+ retail locations that CSI operates in California. (Hubble Dec., Ex. A at p. 12; Ex. B at p. 17; Ex. L; Ex. M; Ex. Q; Ex. R.) Moreover, CSI admits all of the 175+ retail locations in California are “operated under [CSI’s] direct management.” (Hubble Dec., Ex. A at p. 4.) (emphasis added.)

Plaintiff respectfully submits that the evidence detailed herein establishes a *prima facie* case that CSI’s substantial conduct in connection with its ownership and operation of the retail stores satisfies the requirement of purposeful availment.

2. The purposeful conduct of CSI’s incorporated divisions must be imputed to CSI for purposes of determining specific jurisdiction.

In the event the Court is not convinced that CSI has purposefully directed conduct within California as a result of its ownership and operation of over 175 retail stores, CSI remains subject to this Court’s specific jurisdiction as a result of the substantial conduct of its wholly owned subsidiaries,

1 including, but not limited to, LBI,¹¹ that was targeted at and within California.

2 As a general rule, a parent will not be subject to jurisdiction solely as a result of the contacts of
3 its wholly-owned subsidiary, where the parent's involvement in the subsidiary's activities is consistent
4 with the parent's investor status. *See Doe, I*, 248 F.3d at 926. Where, however, the subsidiary
5 functions as nothing more than "an incorporated department" of the parent, the subsidiary's presence
6 may be imputed to the parent. *Id.* at 928.

7 Rather than act in a limited capacity as a mere investor in its incorporated retail divisions, the
8 admissions in CSI's securities filings, on its website, and in CSI's press releases clearly establish that
9 CSI was involved in the day-to-day operations of its retail stores. Setting aside the conclusory
10 declarations submitted in this case, CSI has repeatedly represented to the public that it is involved in
11 virtually every aspect of the operations of its retail stores, including identifying store locations, store
12 design and construction, inventory management, loss prevention, the provisions of employee benefits,
13 the determination of compensation, marketing, distribution, the elimination of stores and termination
14 of employees. (Hubble Dec., Ex. G; Ex. I; Ex. J; Ex. T.) In its most recent 10-K Annual Report, CSI
15 even admits that it is actively involved in continuing efforts to "**reduce store payroll hours.**" (Hubble
16 Dec., Ex. A at p. 41.) (emphasis added.)

17 Not only does the evidence clearly establish that CSI's subsidiaries, such as LBI, are nothing
18 more than incorporated divisions, but also CSI time and again has characterized such entities not as
19 separate and independent companies, but as "**divisions**" or "**brands**" within CSI. (Hubble Dec., Ex. A
20 at p. 1; Ex. B at p. 10; Ex. F; Ex. L.) Even the handbook provided to Lane Bryant associates
21 characterizes Lane Bryant as a "brand" or "division" within CSI. (Hubble Dec., Ex. D at pp. 4, 6.)

22 Faced with analogous situations, courts have repeatedly utilized the contacts of the
23 "incorporated division" to exercise jurisdiction over a parent corporation. *See, e.g., Concat*, 350 F.
24 Supp.2d at 812 (parent subject to specific jurisdiction where documents showed that companies within
25 ownership group acted as "a single entity with a single management team" and cooperated in all areas

26
27 ¹¹ As acknowledged in CSI's Motion to Dismiss, LBI has not challenged the Court's exercise of
jurisdiction and has answered Plaintiff's First Amended Complaint.

1 of management); *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal. App. 4th 228, 245
 2 (exercise of jurisdiction in California was appropriate where subsidiary was “nothing more than an
 3 incorporated department of the parent”); *Bellomo v. Pennsylvania Life Co.*, 488 F. Supp. 744, 746-47
 4 (S.D.N.Y. 1980) (exercise of jurisdiction appropriate where parent’s representations to stockholders
 5 and potential investors established that it was “not merely an investor, but [] rather a super-corporation
 6 engaged primarily in underwriting and selling a variety of insurance policies through several
 7 subsidiaries”); *Paneno v. Centres for Academic Programmes Abroad Ltd.* (2004) 118 Cal. App. 4th
 8 1447, 1456 (where subsidiary is only a means through which the parent corporation acts and “is
 9 nothing more than an incorporated department of the parent,” the contacts of the subsidiary will be
 10 imputed to the parent for purposes of jurisdiction).

11 The evidence detailed above sets forth a *prima facie* case that the purposeful conduct of CSI’s
 12 “incorporated divisions,” including, but not limited to, LBI, must be imputed to CSI for purposes of
 13 determining specific jurisdiction.

14 **3. Plaintiff’s claims arise out of the forum-related conduct**

15 Plaintiff’s claims arise out of the conditions and terms of her employment with CSI, including
 16 CSI’s failure to properly pay overtime wages and violation of California meal break requirements.
 17 (See First Amended Complaint, ¶¶ 36-40; 44-46; 48-53.)

18 As set forth in detail above, CSI’s purposeful conduct aimed at California concerns CSI’s
 19 operation of over 175 retail locations within California, as well as its corresponding employment of
 20 thousands of sales associates at such locations. Alternatively, the purposeful availment of CSI’s
 21 “incorporated divisions” – namely their activities in connection with the operation of the 175+ retail
 22 locations in California – must be imputed to CSI for purposes of determining specific jurisdiction.

23 Clearly, Plaintiff’s employment-related claims are related to or arise out of the operation of the
 24 retail stores by CSI or its incorporated division. See *Ziegler*, 64 F.3d at 473. Stated otherwise, “but
 25 for” the improper policies and procedures in place at the retail stores, Plaintiff’s injury – and the injury
 26 to the putative class members – would not have occurred. See, e.g., *Ballard*, 65 F.3d at 1500, citing
 27 *Shute v. Carnival Cruise Lines*, 897 F.3d 377 (9th Cir. 1990)

1 **4. CSI cannot establish that the exercise of specific jurisdiction in this action would**
 2 **be unreasonable**

3 As with general jurisdiction, where a plaintiff has established the first two elements of specific
 4 jurisdiction, a presumption arises that the exercise of personal jurisdiction is reasonable. *See*
 5 *Flintkote*, 2004 U.S. Dist. 18192 at *8, citing *Roth*, 942 F.2d at 625. As detailed above, in order to
 6 overcome this presumption, CSI bears the burden of establishing a **compelling** case that the exercise of
 7 such jurisdiction would be unreasonable. *Id.*; *Burger King Corp.*, 471 U.S. at 477 (where nonresident
 8 has significant activities within the forum state, “it is presumptively not unreasonable to require him to
 9 submit to the burdens of litigation in that forum as well” and defendant “must present a compelling
 10 case” that the exercise of jurisdiction would be unreasonable.)

11 As set forth above, not only has CSI failed to demonstrate any hardship or suggest, in any way,
 12 that proceeding with this action in California would be unreasonable, let alone put forth the
 13 “compelling” evidence necessary to overcome the presumption of reasonableness, but also the factors
 14 to be considered by this Court in making such a determination weigh heavily in favor of the
 15 reasonableness of proceeding with this litigation in California.

16 Accordingly, the Court should deny CSI’s Motion to Dismiss in its entirety.

17 **C. Plaintiff Should Be Permitted Further Discovery On Jurisdictional Issues**

18 While Plaintiff believes that the above-described evidence constitutes a *prima facie* showing
 19 that jurisdiction exists over CSI, in the event that this Court is inclined to grant CSI’s Motion to
 20 Dismiss, Plaintiff requests that the Court stay any ruling n CSI’s Motion to Dismiss pending initial
 21 discovery as to jurisdictional issues. *See Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d
 22 1280, 1285 (9th Cir. 1977); *DeMelo v. Toche Marine, Inc.*, 711 F.2d 1260, 1271 n. 12 (5th Cir. 1983).

23 More specifically, Plaintiff should also be allowed to propound written discovery requests,
 24 obtain documentation and conduct deposition discovery regarding the extent of the CSI’s participation
 25 in the day-to-day activities of its incorporated divisions, such as LBI, including the extent of CSI’s
 26 involvement in:

- 27 • reducing store payroll hours;
- 28 • the decision to close approximately 150 retail stores, as well as the locations of the closed stores;

- the determination of associate compensation;
- the provision of employee benefits to associates;
- in inventory management;
- identifying new store locations and the negotiation of store leases;
- in store design and construction;
- loss prevention;
- in marketing;
- in distribution/logistics;
- the elimination of employee positions and termination of employees; and
- budgeting, auditing and payroll functions.

(Hubble Dec., ¶ 30.)

In addition, Plaintiff should be permitted to obtain and review documentation including employee handbooks for all of the retail locations of CSI's brands in California, wage statements, organizational charts, joint management documents and joint human resources documents. (Hubble Dec., ¶ 31.)

VI.

CONCLUSION

For the above and foregoing reasons, CSI's Motion to Dismiss must be denied in its entirety. Plaintiff has made a prima facie showing that CSI is subject to personal jurisdiction in California, and CSI has failed to rebut the presumption that the court's exercise of such jurisdiction would be reasonable.

Alternatively, should the Court be inclined to grant CSI's Motion to Dismiss, Plaintiff should be permitted the opportunity to conduct written and deposition discovery as to jurisdictional issues before this Court.

Dated: April 14, 2008

LAW OFFICES OF PETER M. HART

By: /s/

Peter M. Hart, Esq.

Attorney for Plaintiff and the Putative Class